

December 4, 2019

The Chair and Commissioners
Public Service Commission
State of Delaware
Cannon Building
861 Silver Lake Blvd., Suite 100
Dover, DE 19904

Re: *Regulation Dckt. No. 56 – Reply Comments of Gary Myers for Dec. 5, 2019 PSC Meeting In Response to DNREC Submission dated Dec. 2, 201*

Dear Chair and Commissioners:

Secretary Garvin's Letter Asks you to Unconstitutionally Suspend a Duly-Enacted Law

Secretary Garvin's letter of December 2 confirms that DNREC is not at war with the PSC's cost cap regulations but rather with the cost cap limits imposed by the statutory provisions in 26 Del. C. subsections 354(i) & (j). Those were the limits that DNREC's own Secretary, Colin O'Mara, championed as part of the cost cap provisions meant to "ensure ratepayers that there won't be any adverse impact from the [2010 REPSA] legislation." As I indicated in my earlier pre-filed comments dated November 27, it is highly likely that in compliance year 2018-19 the "costs of compliance" for both the solar carve-out and the overall renewable goal exceeded the percentage trip-wires set by subsections 354(i) & (j) **even under the interpretations advanced by DNREC throughout this rule-making.** In fact, those compliance costs exceeded the percentage limits in 2014 (as DNREC then reported) and almost certainly continued to do so in years 2015, 2016, and 2017 - again even under the statutory interpretations that DNREC is pressing here and in the Superior Court

Now Secretary Garvin asks you to grant his agency relief from making the determinations called for by subsections 354(i) & (j) for the 2018-19 compliance year until May, 2020. He says you should do that so that folks can pursue a legislative "solution" to the 2010 statutory cost cap restraints. He wants you to

absolve DNREC from its statutory obligations to "determine[] that the total cost of complying with this requirement during a compliance year exceeds 1% [or 3%] of the total retail cost of electricity for retail electricity suppliers during the same compliance year." He asks your permission for DNREC *to do nothing* even in the face of facts that suggest the statutory limits have been passed under DNREC's own interpretations. Yet, what is missing from the Secretary's letter is any citation to to any constitutional, statutory, or judicial authority that allows the PSC, or DNREC, to simply ignore statutory obligations in order to seek a some unspecified, as-yet-unfiled legislative "solution" to current law. Subsections 354(i) & (j) are the current law (and impose current obligations on DNREC) and no executive agency, commission, or "Administration" has the power to suspend those enactments. Del. Const. art. I, § 10 ("No power of suspending laws shall be exercised but by authority of the General Assembly.").

Immediate Relief

Because of DNREC's refusal to perform the statutory obligations imposed upon it, I ask the Commission to order and direct the following

1. Direct Delmarva Power & Light Company (DP&L) to immediately (before the December 5 meeting) submit to the Commission, so as to make the information available for public review, the information DP&L transmitted to DNREC for compliance year 2018-19 pursuant to the provisions 26 DE Admin. Code, Part 3008, § 3.2.21.1(Exhibit A). Such information should be presented in a manner that permits one to ascertain a separate amount for each component of § 3.2.21.1.

2. Direct the Division and DNREC to immediately (before the December 5 meeting) submit to the Commission, so as to make the information available to for public review, the information the Division was to determine for compliance year 2018-19 pursuant to the provisions of 26 DE Admin. Code, Part 3008, § 3.2.21.2. (Exhibit A). Such information should be presented in a manner that permits one to ascertain a separate amount for each component of § 3.2.21.2.

3. Direct DP&L to immediately (before the December 5 meeting) submit to the Commission, to be made available for public review, a report indicating for compliance year 2018-19 the actual dollar amount of the "Total Retail Costs of Electricity" as defined under DNREC's 2016 REPSA Cost Cap regulations. See 19 DE Reg. 843 (Jan. 2016), *repealed*, 21 DE Reg. 152 (Aug. 2017). That definition is attached as Exhibit B.

The above information - available to the public - would allow the PSC to confirm whether the costs of compliance during the 2018-19 compliance year exceeded the statutory percentage limits under either the PSC cost cap rules or DNREC's proffered interpretations.

Respectfully submitted,

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EXHIBIT A

26 DE Admin. Code, Part 3008,

3.2.21.1 Within 120 days after the end of each Compliance Year, the CREC shall submit to the E&C Director the following information for the applicable Compliance Year:

3.2.21.1.1 The total costs associated with the purchase of SRECs retired to comply with the RPS;

3.2.21.1.2 The total costs associated with all Solar Alternative Compliance Payments as allowed under subsection 4.2;

3.2.21.1.3 The total costs associated with the purchase of RECs retired to comply with the RPS;

3.2.21.1.4 The total costs associated with all Alternative Compliance Payments as allowed under subsection 4.2;

3.2.21.1.5 The Total Retail Cost of Electricity;

3.2.21.1.6 The amount the CREC paid for the QFCPP output that it used to fulfill its REC requirement; and

3.2.21.1.7 The amount the CREC paid for the QFCPP output that it used to fulfill its SREC requirement.

3.2.21.2 Within 120 days after the end of each Compliance Year, the Division of Energy & Climate shall determine the following information for the applicable Compliance Year:

3.2.21.2.1 The total costs associated with any ratepayer funded state solar rebate program; and

3.2.21.2.2 The total costs associated with any ratepayer funded state renewable energy rebate program.

EXHIBIT B

7 DE Admin. Code, Part 2102, § 2 (repealed 21 DE Reg. 152 (Aug. 2017)).

“Total Retail Costs of Electricity” means the total costs paid by customers of the Commission-Regulated Electric Company for the supply, transmission, distribution and delivery of retail electricity to serve non-exempt customers, including those served by third party suppliers, during a respective compliance year.